

BEFORE THE
Federal Communications Commission
WASHINGTON, DC 20554

In the Matter of)	
)	
Informal Request For Certification)	RM-10687
of the Industrial Telecommunications)	
Association, Inc.)	

To: The Commission

REPLY OF MIDWEST GENERATION, EME, LLC

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Dated: May 12, 2003

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REPLY OF MIDWEST GENERATION, EME, LLC

Midwest Generation, EME, LLC, by and through its undersigned counsel and pursuant to FCC Rule Section 1.405, hereby files this Reply in the above-referenced proceeding.¹ In this proceeding, the Federal Communications Commission ("FCC" or "Commission") issued a *Public Notice* requesting comments on the Informal Request for Certification of the Industrial Telecommunications Association, Inc. ("ITA") filed January 27, 2003.² The Commission is treating the Informal Request as a petition for rulemaking, which is appropriate given that the relief requested by ITA would necessitate a modification of the Commission's Rules.

Like the vast majority of commenters in this proceeding, Midwest Generation is strongly opposed to ITA's Request. As persuasively argued by numerous parties, ITA has presented no compelling reason for the Commission to revisit FCC Rule Section 90.35(b)(2) and do away with the requirement that ITA and other "non-primary" coordinators get concurrence from the

¹ Consumer and Governmental Affairs Bureau Reference Information Center Petition for Rulemaking Filed: Informal Request For Certification of the Industrial Telecommunications Association, RM-10687, *Public Notice* (Mar. 26, 2003).

² Informal Request for Certification of ITA, RM-10687 (filed Jan. 27, 2003).

FCC-designated primary coordinators prior to coordinating the Industrial/Business Pool ("I/B") frequencies that were previously allocated exclusively to the former Power, Railroad, and Automobile Emergency Radio Services. Section 90.35(b)(2) was developed through a long rulemaking in which many parties participated and which was finalized less than three years ago.³ Certainly with regard to utilities, the reasons for having the United Telecom Council ("UTC") oversee coordination of former Power Radio Service frequencies remain valid today. In fact, given heightened concerns over homeland security, those reasons may be even more valid now than they were at the rule's inception.

I. STATEMENT OF INTEREST

Midwest Generation has a significant interest in this proceeding because it is one of the largest independent power producers in the United States. It generates and sells electricity on a wholesale basis to power companies, power cooperatives, and other entities throughout northern Illinois, including Chicago. To generate and provide enormous amounts of electricity (enough to meet the needs of more than thirteen million households), Midwest Generation operates twelve generating facilities in Illinois and employs over 1,400 persons.

Midwest Generation relies upon extensive radio systems to support its operations. It uses a private land mobile system for critical functions, including enabling its employees to communicate with the control room when they are operating generators, performing high voltage switching, and performing maintenance switching. The private land mobile system is also used to respond quickly and efficiently to problems in the plants and transmission switchyards.

³ See, e.g., In the Matter of Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, PR Docket No. 92-235, *Fifth Memorandum Opinion and Order*, 16 FCC Rcd. 416, 418-19 (2000).

Midwest Generation also utilizes multiple address systems to remotely control certain operations, such as the unloading of coal trains. Its radio systems operate in the 150-170 and 450-470 MHz bands, including the frequencies that were previously allocated exclusively to the Power Radio Service.⁴

Needless to say, Midwest Generation's radio systems must be available, operational, reliable, and free of interference at all times. Its employees rely on the radio systems for their personal safety and for the efficient and safe operation of the plants and transmission switchyards. In turn, Midwest Generation relies on UTC, as the FCC-designated primary coordinator for the channels previously exclusive to the Power Radio Service, to protect those channels from interference that could occur as the result of faulty or careless frequency coordination.

II. THERE ARE NO COMPELLING REASONS FOR MODIFYING RULE SECTION 90.35(b)(2)

ITA is seeking a modification of Rule Section 90.35(b)(2) that would enable it to coordinate the formerly exclusive Power, Railroad, and Automobile Emergency Radio Service frequencies without having to obtain concurrence from the FCC-designated coordinators of those frequencies. The comments make clear, however, that ITA has provided no compelling reasons for the Commission to initiate a rulemaking geared toward effecting such a modification. As noted in a joint filing by UTC, the Association of American Railroads ("AAR"), the American Automobile Association ("AAA"), and the American Petroleum Institute ("API"), "ITA has not made the necessary showing to justify a change in the PLMR frequency coordination rules and

⁴ Midwest Generation holds fourteen licenses on former Power Radio Service frequencies in the 150-170 MHz band and three licenses on former Power Radio Service frequencies in the 450-470 MHz band.

policy established through numerous proceedings, each of which was subject to the procedural guidelines meant to foster Commission decision-making on the basis of a full and accurate record."⁵

Many commenters pointed out that the need for the concurrence requirement of Section 90.35(b)(2) is stronger than ever in light of increased homeland security concerns.⁶ For example, UTC, AAR, AAA, and API asserted that "the increased awareness surrounding the viability and reliability of the quasi-public safety services . . . are at the forefront of the nation's homeland security effort."⁷ Likewise, Ameren and Dominion Resources noted in a joint filing that utilities' radio systems "have become a vital part of utilities' responsibilities related to homeland security."⁸ Midwest Generation concurs with those concerns. The Commission believed that protection of utilities' radio systems was sufficiently important to merit a concurrence requirement when Section 90.35(b)(2) was finalized in December 2000. It would be reckless to eliminate that protection in today's environment.

The Personal Communications Industry Association ("PCIA"), Forest Industries Telecommunications ("FIT"), and MRFAC support grant of ITA's Informal Request because they claim it is necessary to bring competition to coordination of the formerly exclusive frequencies.⁹ They are certainly confident that competition would benefit them in particular; FIT

⁵ Opposition of UTC, AAR, AAA, and API at 16-17. Unless otherwise indicated, all comments and other pleadings cited or referenced in this Reply were filed in RM-10687.

⁶ *See, e.g.*, Opposition of UTC, AAR, AAA, and API at 18; Opposition of Ameren and Dominion Resources at 4; Comments of Southern Company at 3; Opposition of Cinergy Corporation at 7; Comments of Lincoln Electric System at 3.

⁷ Opposition of UTC, AAR, AAA, and API at 18.

⁸ Opposition of Ameren and Dominion Resources at 4.

⁹ Comments of PCIA at 2-3; Comments of FIT at 3-4; Comments of MRFAC at 2-3.

and MRFAC explicitly ask to be included in ITA's petition and permitted to coordinate the frequencies without having to obtain concurrence.¹⁰ PCIA implies as much, emphasizing at length that it "supports competition" and extolling its own history as a frequency coordinator.¹¹ As pointed out by other commenters, however, the Commission has already carefully considered and rejected the notion of allowing full competition for the formerly exclusive frequencies.¹² The Commission determined that allowing full competition would increase the likelihood of interference, thus threatening the integrity of critical infrastructure communications.¹³ Moreover, PCIA, FIT, and MRFAC ignore the fact that a significant degree of competition already exists for those frequencies: Section 90.35(b)(2) expressly permits any coordinator certified in the I/B Pool to coordinate these channels so long as they obtain concurrence from the FCC-designated coordinator. UTC points out that it has received approximately ten requests for concurrence from ITA over the past two years and has granted every single one.¹⁴

III. MODIFYING FCC RULE SECTION 90.35(B)(2) COULD LEAD TO THE IMPRUDENT PLACEMENT OF NON-UTILITY LICENSEES ON THE FORMERLY EXCLUSIVE POWER RADIO SERVICE FREQUENCIES

Several utility commenters expressed concern that if the Commission modifies Section 90.35(b)(2) to eliminate the concurrence requirement, ITA will place many non-utility licensees on the formerly exclusive Power Radio Service channels without due concern for the integrity of

¹⁰ Comments of FIT at 1; Comments of MRFAC at 1.

¹¹ Comments of PCIA at 1-3.

¹² *See, e.g.*, Opposition of UTC, AAR, AAA, and API at 14-15; Opposition of Ameren and Dominion Resources at 3-4.

¹³ In the Matter of Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, PR Docket No. 92-235, *Second Report and Order*, 12 FCC Rcd. 14307, 14330 (1997).

the spectrum.¹⁵ Midwest Generation shares this concern. As noted by numerous commenters, ITA is principally representative of non-utility businesses, and it seems likely that it will seek to accommodate them on the previously exclusive channels.¹⁶ It can already do that now (contrary to ITA's incorrect statement in its petition that it cannot),¹⁷ but the requirement for concurrence by UTC prevents the possibility of inappropriate coordinations that could cause interference to utility licensees.

Commenters also pointed out that ITA's purported commitment to protecting utilities' radio systems is questionable given that it has recently advocated positions before the FCC that are distinctly contrary to utilities' spectrum interests.¹⁸ For example, in the 800 MHz Public Safety Interference Rulemaking, ITA is advocating a rebanding plan that is uniformly opposed by utilities.¹⁹ Also, in the 4.9 GHz Rulemaking, ITA opposed providing additional 4.9 GHz spectrum to utilities.²⁰ Midwest Generation finds it disquieting that an entity that actively

¹⁴ Comments of UTC at 5.

¹⁵ Opposition of Ameren and Dominion Resources at 8; Opposition of Cinergy Corporation at 8; Opposition of Westar Energy at 7.

¹⁶ *See, e.g.*, Comments of UTC at 10-11; Comments of Lincoln Electric System at 2; Comments of We Energies at 1; Comments of PSEG Services Corporation at 5.

¹⁷ Informal Request for Certification of ITA at 9.

¹⁸ *See, e.g.*, Comments of UTC at 10 n.26; Opposition of Ameren and Dominion Resources at 6-8; Comments of We Energies at 1; Comments of Lincoln Electric System at 2.

¹⁹ In the Matter of Improving Public Safety Communications in the 800 MHz Band, WT Docket No. 02-55, Joint Reply Comments of ITA, Nextel Communications, et al. (filed Aug. 7, 2002).

²⁰ In the Matter of the 4.9 GHz Band Transferred From Federal Government Use, WT Docket No. 00-32, Reply Comments of ITA (filed Aug. 7, 2002); *see also* In the Matter of the 4.9 GHz Band Transferred From Federal Government Use, WT Docket No. 00-32, *Memorandum Opinion and Order and Third Report and Order*, FCC 03-99 (rel. May 2, 2003).

opposes utilities' spectrum interests might be given unfettered discretion to coordinate non-utility licensees on channels that are highly important to utility operations.

IV. CONCLUSION

Although ITA seeks to modify FCC Rule Section 90.35(b)(2) so as to be able to coordinate the formerly exclusive Power, Railroad, and Automobile Emergency Radio Service frequencies without having to obtain concurrence from the FCC-designated coordinators of those frequencies, ITA provides no compelling reasons for modifying the rule. The many commenters opposing ITA's Informal Request have made it abundantly clear that there are no good reasons for deleting the concurrence requirement and, in fact, homeland security concerns have increased the importance of retaining it. Therefore, ITA's Informal Request must be denied.

WHEREFORE, THE PREMISES CONSIDERED, Midwest Generation requests that the Commission proceed in a manner consistent with the views expressed herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Gloria Smith, do hereby certify that on this 12th day of May 2003, a copy of the foregoing "Reply of Midwest Generation, EME, LLC" was mailed, via U.S. Mail, postage prepaid to each of the following:

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